

## **JUSTICE COURT CLERK CONFERENCE QUESTIONS**

**1. What do you do when your judge acts inappropriate/unethical and when you confront him he says he is doing things correct. You tell him you are going to find out the correct legal information at the court conference and he tells you not to stir the pot and to do what you are doing even if it is wrong until someone finds out and slaps your hand?**

Under the Code of Judicial Conduct, a judge must follow the law and all appropriate rules and procedures. If a judge is intentionally acting contrary to law, the judge can be sanctioned by the Judicial Conduct Commission. All court employees have an ethical obligation to report unethical conduct of which the employee becomes aware. Therefore, if a court employee is certain that a judge is behaving unethically, the employee has an ethical obligation to report such behavior. There are several options for a court employee in this situation. The first would be to address the behavior with the judge to see if the behavior can be corrected. The second would be to report the behavior to the Judicial Council and the Chief Justice of the Supreme Court. The Judicial Council can then evaluate whether to take action with the judge or refer the matter to the Judicial Conduct Commission. The third option is to file a complaint directly with the Judicial Conduct Commission. If anyone has questions about these procedures, they should feel free to contact me.

**2. What do you do when tickets take weeks or months to appear and the defendant has been calling over and over trying to setup an appearance?**

This is a difficult question, because law enforcement officers are legally obligated to file citations with the court within fourteen days after a citation is issued. If law enforcement officers are not filing tickets within that time, they are violating the law. Law enforcement officers should be told that they are violating the law, and if the behavior persists, the Attorney General's Office should be notified. As for defendants who are frustrated by this situation, if the delay is excessive, the court could dismiss the citation without prejudice. If the prosecuting attorney wants to pursue the case, the prosecuting attorney could file an information and have it served on the defendant.

**3. What do you do about charges on a citation when the written code does not match the verbal description of the charge?**

If you can be certain of what the true charge is, then you can go ahead and amend the citation to provide the appropriate code. However, if there is any question at all, the citation should be referred to either the law enforcement officer or the prosecuting attorney to determine the correct charge.

**4. Who should identify on a citation in a "small" court whether it is a first, second, or third DUI?**

The law enforcement officer should identify whether it is a first, second or third DUI. If it is not identified on the citation, the court should not take any action on the citation until the citation has been reviewed by the prosecuting attorney so the prosecuting attorney can determine

whether the citation has been appropriately filed.

**5. Do all departments write two citations for DUI and other charges in the same stop. The Highway Patrol especially does this, and sometimes the two citations get separated before adjudication.**

I am not certain if this a regular practice. However, this situation presents significant difficulties for the court, and two citations should be avoided if possible. Local courts should work with law enforcement to see if this process can be stopped. The difficulty that is presented is that if one of the citations is adjudicated, the court may be prohibited from proceeding on the other citation based on occurrences out of the same criminal episode. Law enforcement should understand this and write one citation for each criminal episode, or at least make certain that multiple citations are sent over together and stapled or paper-clipped to keep them together.

**6. How long do you keep police reports until disposition or closure?**

If police reports are filed with the court, they should be kept as long as the case file is maintained. However, a court should consider whether it should accept police reports. Police reports are evidence from one side in a case. Typically, police reports should only be filed with the court as evidence in a trial or perhaps as a part of sentencing. Once filed, they become a part of the court record and are kept as long as the case is maintained.

**7. Can a justice court place people on a 72 hour hold similar to AP&P? Basically a no bail hold?**

No, a justice court may not place people on 72 hour hold. A justice court can issue an order to show cause or a bench warrant on a probation violation and a person could be arrested on the warrant, but the person would be entitled to bail while the probation violation is resolved. The court could set a relatively high bail amount to keep the defendant in jail, but the court cannot do a 72 hour hold.

**8. Can a justice court require a person to carry a card that waives his/her right against search - anytime, anywhere, any reason - similar to AP&P?**

No, a justice court may not require a person to carry a card that waives his or her right against search. A person can waive his or her right against search, but the waiver must and may only occur at the time the search is conducted. A waiver of the right against a search must be knowing and voluntary. If a court were to force a defendant to waive his or her rights, the consent would not be voluntary.

**9. Are courts required to use the four page Rule 11 paper given to the judges a few years ago or was that merely a suggestion?**

The four page Rule 11 paper is not required, but are recommended. A justice court may use a different form as long as it contains all of the provisions covered under Rule 11.

**10. How do you answer these questions: How do I keep this citation off my record? How do I get a plea in abeyance?**

The first question should be answered by telling the defendant that he or she should consult an attorney or contact the prosecuting attorney. The court cannot advise a defendant how to keep a citation off his or her record. As for the second question, if the court offers pleas in abeyance the court can explain the process for obtaining a plea in abeyance. In some courts, prosecutors have standing orders permitting pleas in abeyance in certain situations. In that situation, the court could explain the process. In other situations, the court should refer the defendant to the prosecuting attorney for the process of obtaining a plea in abeyance.

**11. A court will not give public information, copy of docket, etc. to a person if they are not a defendant without filling out a request to be approved. Is this an okay procedure or should it be removed and allow people public information? Can the Administrative Office of the Court override city policy on records access?**

Under the provisions of GRAMA and the Rules of Judicial Administration, a court can require an individual to submit a written request in order to receive public information. However, this is not required, as a court can waive the requirement for a writing. If a person submits a request in writing, and the information is public, the information must be provided. Most information in justice court case files are public. If the information is public, the court cannot require an individual to state why they want the information. The court can only require that the person submit a request identifying the record.

The records access rules in the Rules of Judicial Administration override any city policies. The judiciary controls its own records, and a city or county may not enact rules that conflict with the judiciary's rules of administration.

**12. Can court clerks give the prosecuting attorney DLD info or criminal history in determining plea agreements? Can they sign a non-disclosure to be given this information?**

A court should not provide DLD info or criminal history information if the court does not already have the information. A court should not run such requests on behalf of the prosecuting attorney, unless the court also needs the information. If the prosecuting attorney needs the information, they should contact the Department of Public Safety to get the information directly from that agency. Because the court cannot give that information to a prosecuting attorney, a non-disclosure agreement is irrelevant.

**13. Is it the court clerk's responsibility to send the defendant for a book and release at the jail?**

No, it is not the court clerk's responsibility. It is the judge's responsibility to make certain that a defendant is ordered to the jail to be booked and released.

**14. What are the procedures when people come in and ask about obtaining case info? If it is the defendant, or a family member, friend, employer, etc.**

As discussed above, when people request information, the court can require the requester to submit the request in writing. If the information is public, the information must be given out without regard to who the individual is or why they want the information. If the information is not public, the information can still be released under certain circumstances to, for example, a defendant or the defendant's attorney. The court should make certain who the person is before releasing any non-public information.

**15. People are always asking what the difference is between guilty and no contest. What is the best answer for this?**

In a guilty plea, a defendant admits guilt and the court sentences the defendant accordingly. In a no contest plea, the defendant does not admit guilt, but the court is still entitled to sentence the defendant as if the defendant were guilty. The consequences of a guilty plea and a no contest plea are exactly the same. The only difference is that the defendant does not specifically admit guilt on a no contest plea.

**16. When the court processes an appeal, what does not go with the file to district court? (i.e. counseling referrals, counseling updates, UA's, pre-sentence reports, police reports, etc.**

A justice court need not send any documents that are filed with the court after a sentence, that are part of probation. A justice court would not need to send counseling referrals, counseling updates, UA's, etc. Anything that is filed with the court prior to sentencing should be sent to the district court, even though the district court may never look at the information.

**17. Sometimes after an appeal is processed and the file is forwarded to district court the court continues to receive updates from counseling agencies and/or drug testing agencies. What are we to do with these documents? Shred? Send to district court to filed with the appealed case? Docket and file with closed case?**

The court should docket and file these documents with the case. When an appeal is filed, the judgment is not automatically stayed. It is possible that a court could continue to deal with a defendant on probation, even while the defendant appeals his or her conviction. Therefore, those documents should continue to be filed with the case.

**18. Can the court dismiss small cases that have not been served within 120 days, referring to the civil rule?**

Yes, the court may dismiss small claims cases in those circumstances.

**19. When should the military affidavit and orders be used in small claims cases?**

Military affidavit needs to be filed in every case in which a default judgment is entered. For more specific information, please contact me.